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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/312,797	05/17/1999	SHIPENG LI	MTKI-04-355A	3062
36872 7590 08/13/2009 THE LAW OFFICES OF ANDREW D. FORTNEY, PH.D., P.C. 215 W FALLBROOK AVE SUITE 203 FRESNO, CA 93711				
EXAMINER LEE, Y YOUNG				
ART UNIT 2621		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHIPENG LI

Appeal 2009-003080
Application 09/312,797
Technology Center 2600

Mailed: August 13, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on December 12, 2008. A Docketing Notice was mailed and Appeal 2009-003080 was assigned on January 8, 2009. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Claims 1-3 of the instant application are set forth as method claims that may not fall with one of the four statutory categories of invention recited in 35 U.S.C. § 101. On May 15, 2008, the Deputy Commissioner for Patent Examining Policy, John J. Love, issued a memorandum entitled “Clarification of “Processes” under 35 U.S.C. § 101.” This memorandum is further used in conjunction with the Interim Guidelines and *the Manual of Patent Examining Procedure* (MPEP) § 2106.IV.B, when determining whether a claimed invention falls within a statutory category of invention. *See In re Bilski*, No. 2007-1130, ___ F.3d ___, 2008 WL 4757110 (Fed. Cir. Oct. 30, 2008) (en banc). Thus, there is a question as to whether claims 1-3 meet the requirement of being a patent eligible process under 35 U.S.C. § 101.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 1-3 meet the requirement of being a patent eligible process under 35 U.S.C. § 101.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS:ssc

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